

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

ROBERT EARL FOSTER.

Plaintiff,

v.

DAN WRIGHT, et. al.,

Defendants.

CASE NO.: 2:12-CV-4324-MJW

PLAINTIFF'S PROPOSED VOIR DIRE

Plaintiff Robert Foster respectfully suggests the following areas and general topics with regard to Voir Dire of the jury panel. Plaintiff respectfully requests that Counsel be allowed to conduct Voir Dire either in whole or in part because of the nature and issues in this case. Inquiry into these areas will likely generate disqualifications for cause. Plaintiff respectfully submits the following:

I. General Areas of Inquiry

A. Prior litigation experience of jurors and jurors' family members (spouse, parents, children, siblings, etc.).

1. As a Plaintiff?

- Explain the case
- Result?
- Level of satisfaction with the system

2. As a Defendant?

- Explain the case.
- Result?
- Level of Satisfaction.

3. As a witness?

- Explain the case.
 - Anything memorable about that event?
4. As a juror?
- When?
 - Where (court)?
 - Criminal/Civil?
 - What was the case about?
 - Result?
 - Join in the verdict/verdict agreeable to you?
 - Anything leave a lasting impression with regard to that experience?
5. Ever file a workers' compensation claim?
- Explain the case.
 - Result?
 - Level of satisfaction with system.

II. Burden of Proof

- A. Explain burden of proof—"more likely true than not true"
- i. Whose burden of proof?
 - ii. 50% plus
 - iii. Not "beyond a reasonable doubt"
 - iv. Anyone disagree with such a burden? Or would anyone place a heavier burden on the plaintiff to prove his case?
 - v. Would you place a greater burden than something more than 50% on either party? For example, would you require plaintiff to prove his claims beyond a reasonable doubt or absolutely convince you of his claims of the defendant's misconduct?
- B. This is a civil case, not a criminal case
- i. Criminal case burden of proof is "beyond a reasonable doubt"
 - ii. Would any of you require the plaintiff to prove his case beyond a reasonable doubt?
- C. Does anyone have legal training?
- i. Paralegal
 - ii. law school
 - iii. legal training in your work.
 - iv. legal secretary
 - v. If so, explain.

- a. Understand the difference between a criminal and civil case?
 - b. Understand the difference with regard to the burden of proof?
 - c. Where or when do you use your legal training?
- D. Does anyone have any health care training/job duties—now or in the past?
 - 1. Physical injury care
 - a. Explain
 - b. Ever deal with physical assault or trauma?
 - c. Explain
 - 2. Mental health care
 - a. Explain
 - b. Ever involve someone who was the victim of physical assault?
 - c. Any special training?
 - i. Explain
 - ii. Explain what you do or have done with training in past.
 - 3. Have any of you, who have worked in either physical health care or mental healthcare, worked with or cared for those who were victims of physical assault?
 - a. Explain your training in this area.
- E. Does anyone have experience with legal system not already explained?
 - 1. Does not include domestic relations
 - 2. Have to consult lawyer?
 - 3. Have to go to court?
 - a. Explain
 - b. Any lasting impressions? Like/dislike the experience?

III. Law Enforcement Experience

- A. Does anyone (you, spouse, child, parent, sister, or other family member) work in law enforcement, a correctional facility, or a jail?
 - 1. Explain
 - 2. Who?
 - 3. Where?
 - 4. When?
 - Would that cause you any difficulty in being fair to either the plaintiff Mr. Foster or to the defendant Dan Wright?
 - Would any of you, because of hearing of complaints from someone who was placed under arrest, based on your experiences at work or your family

member's work, simply dismiss Mr. Foster's claims without listening to the evidence?

- Would you be skeptical of his claims based solely on your experiences?

B. Any of you—family members included—work as:

1. Correction officer in any kind of facility?

2. A sheriff or deputy sheriff?

- a. Where?
- b. When?
- c. Duties?

3. A policeman/policewoman

- a. Where?
- b. When?
- c. Duties?

4. Highway patrol

- a. Where?
- b. When?
- c. Duties?

5. Water Patrol?

- a. Where?
- b. When?
- c. Duties?

6. Other law enforcement?

- a. Explain
- b. Where?
- c. When?
- d. Duties?

C. All of you with any sort of law enforcement background (including family members):

1. Have any of you ever been involved in any investigation with regard to claims of assault of a prisoner or an individual under arrest where the

victim claimed to have been seriously assaulted by a law enforcement officer?

Explain:

2. Anyone, just by virtue of your job in law enforcement, ever become aware of any claim—at your location of employment—while working in law enforcement, that a prisoner or detainee was claiming to have been physically assaulted by law enforcement personnel?

Explain:

3. Unfortunately, it is my job to ask this: have any of you been accused by a prisoner or detainee of you improperly treating them?

Explain:

IV. What is your source of Daily News and Current Events

A. Tell me how you get the majority of your news of the day or current events:

1. TV
2. What network?
3. Radio?
4. What source or network?
5. newspaper?
6. What newspaper do you read:
 - a. KC Star
 - b. STL Post Dispatch
7. Blogs
8. Other internet sources?

B. Do any of you watch?

1. Fox News
2. CNN
3. CBS-NBC-ABC
4. Glenn Beck
5. Bill O' Rielly
6. Rush Limbaugh
7. Shawn Hannity
8. Public Television

C. On radio, do any of you regularly listen to:

1. Rush Limbaugh

2. Shawn Hannity
3. Bill O'Reilly
4. NPR

V. Family Members Who have Been Arrested (spouse, child, parent, sibling, etc.)

A. Ask for a show of hands of those who have had someone in their family who has been arrested:

1. Explain relationship
2. Where were they arrested? In Columbia, Mo?
3. Any of those persons complain about:
 - i. The way officers treated them.
 - ii. Being assaulted.
 - iii. Other bad experiences
 - iv. Being the victim when arrested?

B. Anyone feel "that's just the way it is"? If you get arrested and you are assaulted by the officers that it is your own fault for getting in trouble in the first place?

Ex. "Just a part of life"

C. Anyone feel differently?

1. Does anyone feel that a person arrested should not be beaten or assaulted?

D. Does anyone know of someone (relative, friend, acquaintance) who was assaulted by a law enforcement official?

1. Police Officer?
2. Deputy?
3. Prison Corrections Officer?

VI. Civil Rights Cases (by Police)

A. Do any of you believe that when someone is arrested they should be denied their Constitutional rights?

Explain:

B. Do any of you believe that if someone, like Mr. Foster, is arrested and then assaulted, that it is just too bad?

Do any of you believe that a person placed under arrest should or should not have rights to file suit against the person who arrested them, even if that person assaulted the person who was being arrested?

1. That under no circumstances should a person who is put under arrest be allowed to sue for anything, even if assaulted?
2. Even if he was hurt and sustained some type of injury—mental or physical—would you still believe that he should not have the right to pursue a claim?

VII. Value Damages

- A. Would any of you value the damages sustained by Plaintiff to be less solely because it happened during an arrest versus just a common assault between two individuals?
- B. Does anyone have a moral or religious belief that would preclude you or cause you difficulty in sitting in this case and determining or judging Mr. Foster's damages.
- C. Do you feel, for any reason, that you just couldn't sit and discuss this case with other jurors who had a different view than your own?
- D. Because the case involves assault, would any of you have difficulty placing a dollar value on that type of damage?

Respectfully Submitted,

By: /s/ Brent Dwerlkotte
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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of October, 2014, I filed the foregoing document with the clerk of the court using the court's CM/ECF system, which will serve electronic notice upon all parties of interest.

/s/ Brent Dwerlkotte _____

Attorney for Plaintiff.